

1 **PILLSBURY WINTHROP SHAW PITTMAN LLP**
2 CALLIE A. BJURSTROM (SBN 137816)
3 CALLIE.BJURSTROM@PILLSBURYLAW.COM
4 NATHANIEL R. SMITH (SBN 257615)
5 NATHANIEL.SMITH@PILLSBURYLAW.COM
6 MATTHEW R. STEPHENS (SBN 288223)
7 MATTHEW.STEPHENS@PILLSBURYLAW.COM
8 501 West Broadway, Suite 1100
9 San Diego, CA 92101-3575
10 Telephone: 619.234.5000
11 Facsimile: 619.236.1995

12 Attorneys for Plaintiff
13 JESSIE W. JONES

14 JESSIE W. JONES

15 Plaintiff,

16 v.

17 F. GARDINER

18 Defendant.
19
20
21
22
23
24
25
26
27
28

Case No. 3:14-cv-02477-MMA-MDD

FINAL PRETRIAL ORDER

Following pretrial proceedings pursuant to Federal Rules of Civil Procedure, Rule 16, and Civil Local Rule 16.1.f.6,

IT IS SO ORDERED THAT:

I. STATEMENT TO BE READ TO JURY

Plaintiff, Jessie Jones, has filed suit against Defendant, San Diego County Sheriff's Detective Francis Gardiner alleging two claims for relief: excessive force and negligence.

On November 29, 2013, Mr. Jones was incarcerated in the George Bailey Correctional Facility. Detective Gardiner was working as a Sheriff's deputy and assisting in a laundry exchange in the module where Mr. Jones was housed. During the laundry exchange, Mr. Jones was removed from the module in handcuffs and transported to a holding cell.

Mr. Jones contends that Detective Gardiner handcuffed him too tightly for lengthy a period of time. Detective Gardiner contends that he confirmed the handcuffs were not applied too tightly and that security and safety concerns necessitated leaving Mr. Jones in handcuffs when he was placed in the holding cell. After placing Mr. Jones in the holding cell, Detective Gardiner made a radio call to notify deputies assigned to the holding cells that Mr. Jones was placed in the holding cell. Detective Gardiner then returned to the module where Mr. Jones was housed to continue assisting with the laundry exchange.

Mr. Jones remained handcuffed in the holding cell for one hour and forty minutes. The handcuffs were removed by deputies assigned to the holding cell.

Mr. Jones contends that Detective Gardiner's actions caused injuries to both of his wrists, including lasting damage to his left wrist and hand. Detective Gardiner denies that he caused Mr. Jones' claimed injuries as well the extent of Mr. Jones' claimed injuries.

1 **II. LIST OF CAUSES OF ACTION TO BE TRIED**

2 All asserted causes of action are to be tried to the jury:

3 **A. First Claim for Relief - Excessive Force under 42 U.S.C. § 1983**

4 **1. Plaintiff's Proposed Elements of Claim for Excessive Force**

5 In order to prove Deputy Gardiner deprived Mr. Jones of his Fourteenth
6 Amendment right to be free from the use of excessive force that amounts to
7 punishment, the plaintiff must prove by a preponderance of the evidence that:

- 8 a. the defendant acted under color of law; and
9 b. the acts of the defendant deprived plaintiff of his particular rights under
10 the United States Constitution.
11 c. the defendant used unreasonable force against the plaintiff.¹

12 **2. Defendant's Proposed Elements of Claim for Excessive Force:**

13 In order for Mr. Jones to prove an excessive force claim under the
14 Fourteenth Amendment against Detective Gardiner, Mr. Jones must prove:

- 15 a. That Detective Gardiner purposely or knowingly used against Mr. Jones
16 force that was objectively unreasonable under the circumstances. The
17 reasonableness of the force used is viewed from the perspective and with
18 the knowledge of Detective Gardiner and not with the 20/20 vision of
19 hindsight.
20 b. In determining whether the force used was objectively reasonable under
21 the circumstances, Detective Gardiner's perspectives and knowledge of
22 the circumstances are taken into account, including:
23 - the relationship between the need for the use of force and the
24 amount of force used;
25 - the extent of Mr. Jones' injury;

26
27

¹ See *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015); NINTH CIRCUIT
28 MANUAL OF MODEL JURY INSTRUCTIONS (CIVIL) Nos. 9.2, 9.29.

- 1 - any effort made by Detective Gardiner to temper or to limit the
2 amount of force;
- 3 - the severity of the security problem at issue;
- 4 - the threat reasonably perceived by Detective Gardiner ;
- 5 - whether Mr. Jones was actively resisting;
- 6 - security concerns presented by Mr. Jones' failure to obey an order
7 issued by deputies;
- 8 - security concerns presented by Mr. Jones turning to face deputies
9 absent instruction to do so; and
- 10 - security concerns presented by Mr. Jones directing threats at
11 Detective Gardiner.
- 12 c. In considering these factors, you must take account the legitimate
13 interests in managing a jail, acknowledging as part of the objective
14 reasonableness analysis that deference to policies and practices
15 needed to maintain order and institutional security is appropriate.

16 **B. Second Claim for Relief - Negligence**

17 1. **Plaintiff's Elements of Claim for Negligence**

18 Jones has the burden of proving each of the following elements by a
19 preponderance of the evidence:

- 20 a. the defendant had a duty to use due care;
21 b. that he breached that duty; and
22 c. that the breach was the proximate or legal cause of the resulting harm.²

23 2. **Defendant's Elements of Claim for Negligence**

24 In order to establish his negligence claim, Mr. Jones must prove that:

27 ² See Judicial Council Of California Civil Jury Instruction 400.

- 1 a. Detective Gardiner owed Plaintiff a duty to use due care;
- 2 b. Detective Gardiner breached that duty to Plaintiff;
- 3 c. Plaintiff was harmed; and
- 4 d. Detective Gardiner's breach of his duty was the legal or proximate cause
5 of Plaintiff's harm.

6 **III. WITNESSES**

7 **A. List of Each Witness Counsel Actually Expects to Call at Trial**
8 **Plaintiff's Witnesses**

9 1. Jessie W. Jones: Contact through Plaintiff's Counsel. Plaintiff – The
10 facts and circumstances of the incident in which he was handcuffed and detained in
11 a holding cell. His injuries suffered as a result and continuing effects this injury
12 has on his daily life, including continued pain.

13 2. Francis Gardiner: Contact through the Office of County Counsel,
14 1600 Pacific Highway, Rm 355, San Diego, California, 92101. Defendant –
15 Sheriff's Deputy – The facts and circumstances of his response to and observations
16 of the incident in which Mr. Jones was handcuffed and detained in a holding cell.
17 The Defendant is also expected to testify regarding his decision and recollection of
18 handcuffing Mr. Jones and placing him in a holding cell.

19 **Defendants' Witnesses**

20 1. Jessie Jones: Plaintiff - regarding his claims.
21 2. Detective Francis Gardiner: Defendant - regarding Plaintiff's
22 allegations and his defenses.

23 3. Lt. Brian Coyne: Retired Sheriff's Lieutenant – regarding what
24 occurred on November 29, 2013 during the laundry exchange, as well as,
25 procedures at George Bailey Correctional Facility at the time.

26 4. Sgt. Carl Darnell: Sheriff's Sergeant – regarding his investigation into
27 Plaintiff's grievance of loss of orange drink on October 20, 2013, the incident on
28

1 November 29, 2013 and the resulting disciplinary hearing involving Plaintiff,
2 Plaintiff's grievance re handcuffing at issue in this action, as well as, procedures at
3 George Bailey Correctional Facility at the time.

4 5. Sgt. Richard North: retired Sheriff's Sergeant – regarding his
5 interaction with Plaintiff on November 29, 2013, his investigation into Plaintiff's
6 allegations of use of force, as well as, procedures at George Bailey Correctional
7 Facility at the time.

8 6. Deputy Juan Pascua: Sheriff's Deputy – regarding his interaction with
9 Plaintiff on November 29, 2013.

10 7. Alfred Joshua, M.D.: Medical Director – regarding Plaintiff's medical
11 complaints while incarcerated in County jails, the treatment provided, Plaintiff's
12 refusals of medical treatment, as well as his management of and investigation into
13 Plaintiff's medical care at the jail.

14 B. **List of Additional Witnesses Counsel Do Not Expect to Call at this**
15 **Time but Reserve the Right to Call at Trial.**

16 **Plaintiff's Witnesses**

17 Any witnesses needed for impeachment or rebuttal.

18 Any witnesses needed to authenticate documents.

19 **Defendants' Witnesses**

20 Impeachment witnesses.

21 Nancy Booth, R.N.: County nurse - regarding Plaintiff's medical complaints
22 while incarcerated in County jails, the treatment provided, as well as her
23 management of and investigation into Plaintiff's medical care at the jail.

24 IV. **EXHIBITS**

25 A. **List of All Exhibits Counsel Actually Expects to Offer at Trial.**

26 A list of all exhibits Jones expects to offer at trial is attached hereto as
27 Attachment 1.

1 Defendant's exhibit list is attached hereto as Attachment 2.
2

3 **B. List of All Other Exhibits Counsel Do Not Expect to Offer at This**
4 **Time but Reserve the Right to Offer if Necessary.**

5 A list of all other exhibits Jones does not expect to offer at this time, but
6 reserves the right to offer if necessary at trial, is attached hereto.

7 **V. STATEMENT OF ALL FACTS TO WHICH THE PARTIES**

8 **STIPULATE**

- 9 1. Plaintiff Jones was a pretrial detainee on November 29, 2013.
10 2. Defendant Detective Gardiner's shift was from 6 p.m. on November
11 29, 2013 through 6 a.m. on November 30, 2013.
12 3. Defendant Detective Gardiner handcuffed Jones at approximately
13 8:50 p.m. on November 29, 2013.
14 4. After applying handcuffs to Mr. Jones, Defendant Detective Gardiner
15 escorted Mr. Jones from Housing Module 4B to Processing Holding Cell number
16 105.
17 5. The parties also stipulate that a timeline of the incident should be
18 admitted as an exhibit and provided to the jury to assist them should they wish to
19 review any of the video footage from November 29, 2013. A copy of that exhibit
20 is attached hereto as Attachment 3.

21 **VI. LIST OF ALL DEPOSITION TRANSCRIPTS BY PAGE AND LINE,**
22 **OR VIDEOTAPED DEPOSITIONS BY SECTION THAT WILL BE**
23 **OFFERED AT TRIAL**

24 None.
25 ///
26 ///
27 ///
28 ///

1 **VII. TRIAL ESTIMATE**

2 The time estimated for trial is three (3) days.

3
4 Dated: October 20, 2017

Michael M. Anello

5 Hon. Michael M. Anello
6 United States District Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28